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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

STATE OF ILLINOIS,

Petitioner,

vs.

WALTER WHITE,

Respondent.

PETITION FOR A WRIT CERTIORARI TO THE ILLINOIS SUPREME COURT

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QUESTION PRESENTED FOR REVIEW

Whether the remedy for an unlawful entry into a residence to arrest a suspect is to suppress any evidence seized in the residence, or whether a later confession to murder must be suppressed as well.

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Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Illinois Supreme Court, which was issued on August 17, 1986.

OPINIONS BELOW

The published opinion of the Illinois Supreme Court in this matter, which affirmed the trial court, reversed the

Appellate Court and ordered defendant's confession suppressed, is reproduced as Appendix A to this Petition. People v. White, 117 Ill. 2d 194 (1987). The unpublished opinion of the Appellate Court of Illinois, First District, which was subsequently reversed by the Illinois Supreme Court, is reproduced as Appendix B to this Petition.

JURISDICTION

The opinion and judgment of the Illinois Supreme Court was entered on August 17, 1987. This Petition is filed within 60 days of that date. United States Supreme Court Rule 20(1). The decision of the Illinois Supreme Court was explicitly based on the Fourth and Fourteenth Amendments to the United States Constitution and on this Court's decision in Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3).

CONSTITUTIONAL PROVISIONS AT ISSUE

UNITED STATES CONSTITUTION -- FOURTH AMENDMENT:

The right of the People to be secure in their persons, houses, papers and

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

UNITED STATES CONSTITUTION -- FOURTEENTH AMENDMENT

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law...

MANNER IN WHICH CONSTITUTIONAL CLAIMS WERE RASIED

After Respondent Walter White was indicted for murder in the Circuit Court of Cook County, Illinois, he moved to quash his arrest and suppress his confession on the grounds that he was arrested in violation of the Fourth and Fourteenth Amendments to the United States Constitution and in violation of the rule of Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). (State Trial Record, hereinafter "R.", 367-368) After an evidentiary hearing, Circuit Judge R. Eugene Pincham granted the motion over the State's objections. (R. 39-43)

The State appealed to the Appellate Court of Illinois, which reversed the trial court's ruling and held respondent's confession admissible. The Appellate Court held that the Payton decision did not apply, since the place where respondent had been

arrested was not his residence. (Appendix B, pp. 16-20) That court further held that, even assuming that respondent had been arrested in his residence, the arrest was justified by exigent circumstances. (Appendix B, pp. 20-23)

Respondent was then granted leave to appeal to the Illinois Supreme Court, where he contended that both holdings of the Appellate Court were wrong. In reply the State contended that the place where respondent was arrested was not his residence. (State's Brief, Issue I) The State also argued that, even assuming that respondent had been arrested in his residence, the arrest was proper because of "the police officers' reasonableness and good faith." (State's Brief, p. 21) Finally, the State contended that there was no causal connection between the alleged illegality,

that being the entry into the residence, and the subsequent confession. (State's Brief, p. 34)

The Illinois Supreme Court rejected the State's contentions, reversed the Appellate Court, affirmed the trial court, and ruled that respondent had be arrested in violation of the holding in Payton. People v. White, 117 Ill. 2d 194 (1987).

STATEMENT OF THE CASE

Respondent Walter White confessed to two murders. The Illinois Supreme Court ruled that the confession had to be suppressed because respondent had been arrested without a warrant at the home of his brother, where respondent had been staying.

On August 12, 1982 Charles Dickens was shot to death at 905 South Pulaski Avenue in Chicago. Ten to 15 minutes later Lonnell Copeland was bludgeoned and shot to death at a nearby location. (R. 256) Eyewitnesses named respondent as one of the perpetrators. (R. 257)

Detectives James Antanocci and Allen Jaglowski later were assigned to the investigation and tried to determine respondent's address and whereabouts. (R. 258, 288) Initially, the detectives went to

624 North Albany in Chicago, which was listed in the police report on the murders as being respondent's address. (R. 258, 288) Then the detectives went to the 700 block of North Harding, which was listed in the police report as being the area where respondent's sister lived. (R. 258, 288-289)

Then the detectives began to check the various addresses given for defendant on his criminal history sheet, which listed his previous arrests. (R. 289) The officers went to a Chicago Housing Authority project buiding at 2236 South Federal, and they learned that respondent had once lived there with his wife but no longer resided there. (R. 259, 298-291) Antanocci and Jaglowski also went to the public aid office at 2136 South Michigan, but were unable to get firm information about respondent's address. (R. 259) The detectives then went to 4436

West 19th Street, which was the address given by respondent when he applied for a driver's license. They did not find respondent there. The detectives checked at the office of the building manager to see if respondent had a lease on an apartment in the complex, but no information was obtained. (R. 260)

Then the two detectives went to 3130 West Flournoy, which was another address given by respondent at the time of a previous arrest. (R. 260, 293) They did not find respondent, but they did learn from talking to people in the area that respondent's mother lived at 13161 South Corliss on the south side of Chicago. (R. 293) The next time they were on duty the detectives went to that location to talk to respondent's mother.

According to Detective Antanocci's uncontradicted account of the conversation with respondent's mother: "At that time she

informed me that Walter had been staying with her, but that at the present time he wasn't there; but that she had talked to him by telephone and she now believed that he was by her other son's house." (R. 297) The detectives immediately proceeded with respondent's mother to 10951 South Michigan, which was the address of respondent's brother. (R. 297)

When respondent's brother appeared at the door of his apartment, he initially denied that respondent was there. (R. 138) The officers walked by respondent's brother and entered the apartment. (R. 298) After respondent's unsucessful attempt to flee by the rear entrance of the apartment, which was covered by another officer, respondent was arrested inside. (R. 298)

The next day respondent confessed to the murders in statements made to

detectives and to an assistant state's attorney. (R. 62-64, 83-89) After being indicted for the murders, respondent moved in the trial court to suppress the statements on the ground that he had been arrested without a warrant in his residence. (R. 367-368) At the hearing on the motion respondent and his relatives testified that he had been staying with his brother for about a week before the arrest. (R. 123, 146-147, 151-2, 162, 176) The trial judge found the statements to be voluntary, but ruled that the statements had to be suppressed because the arrest violated the rule of Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). (R. 39-43)

The State appealed to the Appellate Court of Illinois, which reversed the trial court and held the confession admissible. (Appendix B) Respondent in turn appealed to

the Illinois Supreme Court. In the Illinois Supreme Court the State contended that respondent had not been arrested in his residence, but that, even assuming that respondent lived at his brother's apartment, the detectives had acted reasonably and in good faith and that the confession was not the product of the entry into the apartment. (State's Brief, Issue I, pp. 21, 34)

The Illinois Supreme Court found that respondent had not had any permanent address at the time of his arrest, but that the trial court finding that respondent lived at his brother's apartment would not be reversed. (Appendix A, pp. 4, 18) That court ruled that respondent thus had been arrested in his residence without a warrant, that no exception to the warrant requirement applied, and that the confession was the product of the arrest. (See Appendix A) The

Illinois Supreme Court thus ruled the murder confession inadmissible. People v. White, 117 Ill. 2d 194 (1987). Petitioner seeks a writ of certiorari to review that ruling.

REASON FOR GRANTING THE WRIT

THE PROPER REMEDY FOR AN ALLEGEDLY UNLAWFUL ENTRY INTO A RESIDENCE TO ARREST A SUSPECT IS TO SUPPRESS ANY EVIDENCE FOUND IN THE RESIDENCE, NOT TO SUPPRESS A LATER CONFESSION WHICH IS NOT THE PRODUCT OF THE ENTRY.

In this case everyone agrees that it was lawful to arrest respondent, since there was probable cause to believe that he was guilty of two murders. However, the Illinois Supreme Court held that it was unlawful to enter into the apartment of respondent's brother to make the arrest, since the apartment turned out to be respondent's residence. Under these circumstances, when it is lawful to arrest

but unlawful to enter, the correct remedy is to suppress any evidence seized at the time of the entry but not to suppress other evidence which may have resulted from the arrest. Thus the Illinois Supreme Court erred when it suppressed respondent's confession from the following day, since that confession was in no sense the product of the allegedly unlawful entry.

This Court has made it clear that the exclusionary rule requires suppression of evidence which is the product of unlawful police conduct, but does not even permit exclusion of evidence which is not the product of unlawful police conduct. Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984); United States v. Crews, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980); Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); Wong Sun

v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). This Court should grant certiorari in order to rule that the proper remedy for a Payton violation, which involves an unlawful entry to accomplish a lawful arrest, is to suppress evidence seized at the time of the entry but not to suppress a later confession which may be the product of the arrest. Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980).

In this case either the attenuation rule (Brown, Wong Sun) or the inevitable discovery rule (Nix) would indicate that respondent's confession should have been held admissible. However here petitioner relies on the broader "independent source doctrine," the existence of which was recognized in Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). The decisions of this Court clearly indicate that there will be no

suppression of evidence when that evidence is not the product of unlawful police conduct. Even when the police have acted unlawfully, the scope of the exclusionary rule extends only to evidence which is the product of the illegality.

Here respondent's confession was not the product of the entry by the police into the apartment. It is quite clear that respondent would have confessed had he been arrested on the street, and indeed no one has argued to the contrary. But, more broadly, the proper remedy for a Payton violation is not to suppress a confession taken at a later time and place. By definition, a Payton violation involves an unlawful entry into a residence to accomplish a lawful arrest. Courts should suppress the fruit of the illegality, which is any evidence seized at the time of the entry. Courts should not

suppress a later confession, which is not the product of the illegality.

Thus this Court should grant certiorari in order to inform lower courts of what is the correct remedy for a Payton violation. Past decisions of this Court state that even evidence obtained following an unlawful police action will not be suppressed unless the evidence is the product of that action. As this Court said in Nix v. Williams, 467 U.S. 431, 443, 104 S.Ct. 2501, 2508-09, 81 L.Ed.2d 377, 387 (1984):

> ... the derivative evidence analysis ensures that the prosecution is not put in a worse position simply because of some earlier police error or misconduct... The independent source doctrine teaches us that the interest of society

> in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred. (Emphasis in the original)

Here the Illinois Supreme Court has put the State in a worse position than it would have been in had the officers obtained an arrest warrant or waited for respondent to emerge from the apartment. Once the police learned where respondent was his arrest was inevitable, and the confession was the product of the fact that respondent was arrested at all rather than the product of

the place he was arrested. Since the Illinois Supreme Court has violated the policy behind the exclusionary rule, its decision should be vacated.

Similarly, in many other cases this Court has upheld the admission of evidence obtained following unlawful police conduct when the evidence was not obtained by exploitation of the illegality but by means sufficiently distinguishable to be purged of the primary taint. United States v. Crews, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980); Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) (In Brown the confession was suppressed, but the same legal principle has been used to uphold the admissibility of confessions in other cases. See Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65

L.Ed.2d 633 (1980)). Here respondent's confession was not obtained through exploitation of the entry into the apartment. It was inevitable that respondent was going to be arrested anyway, and the confession was made the following day at a police station. Since there is little or no causal relationship between a Payton violation and a subsequent confession at a different time and place, suppression of the confession is the wrong remedy.

It is true that this Court has held that even a voluntary confession must be suppressed if it is the product of an illegal arrest. Taylor v. Alabama, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982); Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979). But here the alleged illegality lay, not in arresting respondent, but in entering an apartment in order to

accomplish the arrest. A confession at a police station may be the product of an arrest, but it is hard to see how it is the product of the place where the arrest occurred.

In the Payton case itself the remedy applied by this Court for an unlawful entry into a suspect's residence to make an arrest was to suppress evidence seized in the residence. Payton v. New York, 455 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). That is all that is necessary to enforce the exclusionary rule of Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). The police will be deterred from making warrantless arrests of suspects in their homes because the officers would lose evidence seized and possibly statements made in the residences. Here, for example, respondent could argue on remand

that the fact that he tried to escape out of the rear door of his brother's apartment should be suppressed. (R. 261) However, the exclusionary rule as defined by this court forbids suppression of evidence which is not the product of the allegedly unlawful police conduct.

In conclusion, certiorari should be granted because this case involves an important issue of law which has not yet been considered by this Court. That issue is whether the remedy for a Payton violation is only to suppress evidence seized in the suspect's residence, or whether a confession taken at a different time and place must be suppressed as well. The issue is squarely presented by this case, and indeed the Illinois Supreme Court invited guidance from this Court on the subject. (Appendix A, p. 32) Since it was lawful to arrest

respondent, even if it may have been unlawful to enter his brother's apartment to do so, respondent's confession at a police station was not the product of any unlawful action by the police.

CONCLUSION

Petitioner, the State of Illinois, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX A

Opinion of the Illinois Supreme Court in People v. Walter White, (No. 62082, August 17, 1987)

APPENDIX A

August 17, 1987

Docket No. 62082 - Agenda 2 - November 1986. THE PEOPLE OF THE STATE OF ILLINOIS, Appellee v. WALTER WHITE, Appellant.

CHIEF JUSTICE CLARK delivered the opinion of the court:

On September 6, 1982, the defendant, together with three other persons, was charged by indictment in the circuit court of Cook County with the offenses of murder, armed violence, and conspiracy (Ill. Rev. Stat. 1981, ch. 38, pars. 9-1(a)(1), 9-1(a)(2), 33A-2, 8-2). Thereafter, defendant filed a motion to suppress several statements he made while in custody on the basis that these statements were obtained in violation of his fifth, sixth, and fourteenth amendment

rights. During the hearing on this motion the defendant filed a second motion which requested that his arrest be quashed and his statements suppressed on the basis that these statements were obtained in violation of his fourth and fourteenth amendment rights. More specifically, the defendant's second motion contended that he was illegally arrested at home without a warrant, in violation of Payton v. New York (1980), 445 U.S. 573, 63 L.Ed.2d 639, 100 S.Ct. 1371. Although the trial court denied the defendant's first motion to suppress, finding that the defendant's in custody statements were voluntarily given, it sustained the defendant's second motion, suppressing the statements as the product of an unlawful arrest.

The State appealed this decision to the appellate court. Apparently because of a

clerical error in the Cook County public defender's office, the defendant filed no brief in the matter. In an unpublished order the appellate court reversed (132 Ill. App. 3d 1162), holding that exigent circumstances justified the warrantless arrest of the defendant. The court went on to hold that, even in the absence of exigent circumstances, the defendant's warrantless arrest was not precluded by Payton because it did not occur in his home. We granted the defendant's petition for leave to appeal (103 Ill. 2d R. 351(a)).

On August 12, 1982, Charles Dickens was shot to death at 905 South Pulaski Avenue in Chicago. Approximately 10 to 15 minutes later, four to five blocks away, Lonell Copeland was killed in the 3800 block of West Roosevelt Road. Two alleged eyewitnesses to these killings, James Smith and Wilbur

Johnson, talked to certain Chicago police officers sometime thereafter and implicated the defendant. The record does not reveal whether both Smith and Johnson, or either of them, witnessed both killings. Both Smith and Johnson were later indicted with the defendant.

On August 19, 1982, Detectives James Antanocci and Allen Jaglowski were assigned to investigate the Dickens and Copeland killings. Learning from police reports that the defendant was implicated in the killings, they began to search for him. Over the next several days the detectives canvassed several different addresses found in the defendant's criminal history, Chicago Housing Authority records, public aid records, State driver's license records, and police reports. At no time during their investigation did they seek a warrant for his arrest.

On August 19 they went to 624 North Albany Street, an address listed as the defendant's home in one of the police reports. When they arrived at this address they found it to be a building which had suffered fire damage and was apparently unoccupied. Failing to find the defendant at this address, they then went to 700 North Harding Street, listed in the police reports as the address of the defendant's sister. They were again unsuccessful in finding the defendant. On the next day, August 20, they went to 2236 South Federal Street, a Chicago Housing Authority project building. The detectives derived this address from the defendant's prior criminal history. Upon arrival they learned that the defendant was no longer residing there but that apartment 408 had previously been rented to Edna Mae White, the defendant's wife. The detectives then inves-

tigated two other addresses, 4436 West 19th Street and 3130 West Flournoy Street, which had been listed as the defendant's addresses on his application for a driver's license and in his prior criminal history, respectively. According to the defendant, 4436 West 19th Street was the site of his mother-in-law's home. The detectives were unable to find the defendant at either location. However, persons at the Flourney Street address informed them that the defendant's mother lived at 13161 South Corliss Street. Both detectives then went off duty and did not resume their investigation until August 23.

The record reveals, and the trial court found, that the defendant was actually staying during this time at the home of his oldest brother, Michael Jerome Loving. According to the defendant, he had been living with his wife at the Federal Street address

until sometime during the summer of 1982. He ceased living there after his wife left him and went to California. Thereafter he stayed "off and on," with his brother, his sister, and his mother. On August 23, he had been staying with his brother for approximately seven days. The defendant's brother and sister-in-law, Vivan Loving, both testified to the same effect. So far as the record reveals, the defendant had no permanent address at that time. Vivian Loving testified that she did not know where the defendant "normally" lived, that he was "just staying" with the Lovings, and that their house was not his "home." The defendant's mother, Desiree White, testified that the defendant's "normal" address was on Federal Street, but that he was "staying with" his brother on August 23. She also stated that, as of August 23, he had no "permanent" address.

The defendant was not receiving mail at his brother's apartment, and his name was not on the bell. The record does not reveal whether he kept any or all of his clothes and possessions at his brother's apartment, or whether he was given a separate room of his own. The record also does not reveal whether his brother had placed any time limit upon the defendant's stay at the brother's apartment, or whether the defendant himself planned to leave at any definite time in the future.

On August 23, Detectives Antanocci and Jaglowski, together with Detective McNamon, resumed their search for the defendant. They went to 13161 South Corliss Street and spoke with the defendant's mother, Desiree White. She told them that she was aware that the defendant was wanted by the police. She went on to say that she had spoken with the

defendant the night before. She had informed the defendant that the police were looking for him. According to his mother, the defendant had replied that he did not commit the offenses and the he was going to surrender to the police. The defendant's mother then told the detectives that the defendant could be found at Michael Loving's home at 10951 South Michigan Avenue. She agreed to accompany them to Loving's apartment in an attempt to find the defendant.

The building at 10951 South Michigan Avenue is a two-story buiding with a storefront on the first floor and two apartments on the second floor. The Loving family occupied the apartment in the rear of the building, away from the street. To reach the Loving apartment one would have to pass through two doors, one opening on the

sidewalk, and a second at the top of a flight of stairs. Between the two doors there was a hallway and the single flight of steps. Both doors were normally kept locked. Vistors rang a bell at the outside door, but there was no intercom. The outside door was opaque, with a mail-slot at the bottom. At the rear of the apartment was a porch, which could be reached from the rear bedroom. While normally an outside stairway led from the backyard to the porch, it had been partially removed for repairs.

Desiree White and the three detectives arrived at 10951 South Michigan Avenue at approximately 9:30 a.m. on the morning of August 23. While White rang the bell, Detectives Antanocci and McNamon stood behind her. Michael Loving and his family were eating breakfast. When he heard the bell ring, Loving descended the stairs to the

first floor. When he heard his mother call out "It is me, Michael", he opened the door. As he opened it, the two detectives stepped around White and entered the hallway. They did not ask permission to enter or announce their purpose. They also did not draw their guns. White then asked Loving if the defendant was there. Loving, feeling that "something wasn't right," at first denied that the defendant was present. When White asked again, Loving admitted the defendant's presence. The two detectives then went up the stairs to Loving's apartment. Loving followed them up and pushed past them while they were on the stairs. At no time during these events did he give them permission to enter.

The two officers reached the top of the stairs and entered the kitchen area of the Loving apartment. They then started for the

Loving children's bedroom. As they were about to enter the bedroom, Loving called out: "Wait a minute." The two officers then drew their guns. Vivian Loving told them: "You ain't got to do that, my kids is in here." The defendant then stepped out of the children's bedroom and into the kitchen area.

While these events were taking place, Detective Jaglowski had gone to the rear of the building where a rear exit from Loving's apartment opened onto a rear porch area which connected the apartment to the ground via a "fairly well-broken down staircase." While Jagolowski was standing in the alley behind Loving's apartment, he observed the defendant walk out of the rear door and across the porch. The defendant then made eye contact with Jaglowski, turned around and went back towards the rear door. Jaglowski called out to his fellow officers that the defendant was

attempting to escape and also called to the defendant: "Stop! Police!" Defendant reentered Loving's apartment. Jaglowski then made his way up the staircase, drew his gun, and knocked on the rear door. According to Jaglowski, one of the defendant's relatives unlocked the rear door and let him enter. Jaglowski then went through the rear bedroom. He holstered his gun when he saw the defendant speaking with the other detectives and the defendant's mother, who had followed them up the stairs.

The defendant talked with the detectives and his mother for several minutes. His mother urged him to go with the officers and tell them the truth. The defendant agreed to go with the officers. Before he left he removed some jewelry he was wearing and handed it to his brother. The defendant was placed in handcuffs during the ride with his mother to the police station.

The defendant arrived at the station at approximately noon on August 23. He was separated from his mother and placed in a small interrogation room, without a clock or windows.

The defendant was first interrogated by Detectives Antanocci and McNamon. According to Antanocci, McNamon advised the defendant of his constitutional rights and received assurances from the defendant that he understood those rights. The defendant was then questioned about the killings. Antanocci testified that neither of the detectives threatened or beat the defendant in any way during the time that they were interviewing him.

At approximately 5 p.m. on August 24, 1982, the defendant was interviewed by Detectives Gary Bulava and James Hanrahan. According to Bulava, these two detectives

gave the defendant his Miranda rights and again the defendant indicated that he understood them. During the one-hour interview the defendant confessed his participation in the killings. Detective Bulava also testified that he and Detective Hanrahan neither physically nor psychologically coerced the defendant during the interview.

Later that evening, Assistant State's Attorney Thomas Roche interviewed the defendant in the presence of Detectives Bulava and Hanrahan. Roche testified that he informed the defendant of his Miranda rights, and the defendant once again stated that he understood those rights and wished to speak with Roche. According to Roche, he then questioned the defendant for approximately 30 minutes about the homicides and the defendant again confessed his participation. However,

the defendant refused to make any written statement. Roche also testified that he did not coerce the defendant. Roche further testified that he saw no evidence that the defendant had been phsyically injured.

At approximately 9 a.m. on August 25, 1982, nearly 45 hours after the defendant arrived at the stationhouse, the defendant was formally placed under arrest. Prior to 6 p.m. that same day, the defendant attempted to kill himself in the interview room by slashing his wrists with a piece of metal. Detective Clarence Thedford intervened after one of the co-defendants, who was in an adjacent interview room, alerted the detectives to the defendant's actions. Thedford was able to stop the bleeding, and the defendant was transported to the hospital.

According to the defendant, neither the detectives nor the Assistant State's Attorney ever informed him of his Miranda rights. He testified that two detectives beat him and threatened him. The trial court sustained the defendant's second motion to suppress the confessions on the basis that they were the product of an illegal warrantless arrest at the defendant's home in violation of Payton v. New York, (1980), 445 U.S. 573, 86 L.Ed.2d 639, 100 S.Ct. 1371. The trial court denied the defendant's first motion to suppress on the basis of the fifth amendment, finding that the police officers did not physically harm the defendant and that the statements he made were voluntary.

The appellate court reversed, finding that the warrantless arrest of the defendant was justified by exigent circumstances, principally because "the police had

substantial reason to believe that the defendant was an armed murderer of two individuals who was attempting to avoid detection by the police by staying at the residences of several relatives." Alternatively, the court held that Payton did not apply to the defendant's arrest because the Loving apartment could not be considered the defendant's home for Payton purposes. The court found that defendant had been staying with his mother on the evening prior to his arrest and had gone to the Loving apartment in order to avoid detection by the police. Because of its resolution of these two issues, the court did not reach the State's additional contentions that the statements should not be suppressed because Michael Loving had given his consent to the police entry, that the statements were not the product of the illegal arrest, and that

the defendant accompanied the police to the station voluntarily.

On this appeal the State argues that: (1) Payton does not mandate suppression of the defendant's confession because the defendant was not arrested in his own home; (2) even assuming Payton applies, exigent circumstances justified the defendant's warrantless arrest; (3) even if there were no exigent circumstances, the police had Michael Loving's consent to enter the Loving apartment; and (4) even assuming the defendant's arrest was unlawful, the defendant's confession was not tainted by his unlawful arrest. Bearing in mind that a ruling of the circuit court on a defendant's motion to suppress will not be set aside unless clearly erroneous (People v. Clark (1982), 92 Ill. 2d 96, 99), we examine each of these contentions in turn.

The State first argues that the Loving home was not the defendant's home under Payton, and that therefore the police did not have to seek a warrant for his arrest. Under Payton, the police may not, absent exigent circumstances, enter a "suspect's home" to arrest the suspect without a warrant for the suspect's arrest and reason to believe that the suspect is within. (Payton v. New York (1980), 445 U.S. 573, 574-75, 602-03, 63 L.Ed.2d 639, 643-44, 660-61, 100 S.Ct. 1371, 1374, 1388.) While the State cites cases dealing with the question of whether a suspect arrested at, on, or near the threshold of his dwelling has been arrested in his home (see, e.g., United States v. Holland (2d Cir. 1985), 755 F.2d 253), the State has not cited, nor has our research disclosed, any cases dealing with the question of when, and under what

circumstances, a defendant can claim that a particular residential premises is his home under Payton. Thus, this case presents an issue of first impression.

While Payton itself does not contain any definition of a suspect's home, it does provide some guidance on this question. The significance of an individual's home for fourth amendment purposes is that it provides a clearly defined "zone of privacy," bounded by "unambiguous physical dimensions." (Payton v. New York (1980), 445 US. 573, 588, 63 L.Ed.2d 639, 100 S.Ct. 1371, 1381.) The protection granted this "zone of privacy" is rooted in the clear and specific constitutional guarantee that "[t]he right of the people to be secure in their *** houses *** shall not be violated." (U.S. Const., amends. IV, XIV.) Thus at the "very core [of the fourth amendment] stands the right of a

man to retreat into his own home and there be free from unreasonable governmental intrusion.'" (Payton v. New York (1980), 445 U.S. 573, 589-90, 63 L.Ed.2d 639, 100 S.Ct. 1371, 1382.) The State argues that the "ambit" of a suspect's home for Payton purposes is to be narrowly defined. We do not agree. This language suggests to us that the importance of the guarantee against physical intrusion into the home mandates a liberal construction for claims that a particular place is a suspect's dwelling. It also suggests that whether a particular palce is to be deemed a suspect's home will depend on whether the suspect's association with a particular place provides that suspect with a reasonable exception of privacy such that he would be justified in believing that he can retreat there, secure against governmental intrusion.

Our conclusion is strengthened by the fact that the Supreme Court has also held that the police must secure a search warrant to arrest a suspect in the home of a third party. (Steagald v. United States (1981), 451 U.S. 204, 216, 68 L.Ed.2d 38, 48, 101 S.Ct. 1642, 1649-50.) Thus Payton and Steagald combined teach us that the police should, absent exigent circumstances, seek either an arrest warrant or a search warrant when they plan to arrest a suspect in any dwelling. Of course, the suspect arrested in the home of a third party may not have standing to object to the search of that third party's home. (See Rakas v. Illinois (1978), 439 U.S. 128, 58 L.Ed.2d 387, 99 S.Ct. 421.) But the general injuction to seek warrants prior to entering dwellings is clear. Moreover, the dissenters in Steagald apparently contemplated that a Payton home is

to be broadly defined: "If a suspect has been living in a particular dwelling for an significant period, say a few days, it can certainly be considered his 'home' for Fourth Amendment purposes, even if the premises are owned by a third party and others are living there, and even if the suspect concurrently maintains a residence elsewhere as well. (Steagald v. United States (1981), 451 U.S. 204, 230-31, 68 L.Ed.2d 38, 57, 101 S.Ct. 1642, 1657 (Rehnquist, J., dissenting).) Indeed, a broad definition of a suspect's home makes the task of the police easier, since to enter the suspect's home the police need only an arrest warrant and probable cause to believe the suspect is within, whereas to enter the home of a third party the police also need a search warrant.

Thus, in the context of defining the suspect's home for Payton purposes, a

suspect's expectation that he will not be subject to a warrantless arrest in a particular place will be deemed reasonable where his own behavior and the behavior of others support the belief that the place of arrest is the suspect's home. Payton protects the interest in freedom from seizure of one's person while within the confines of a place where it is reasonable to believe that one's person will be inviolate. While common law rules of property rights are not determinative, the reasonableness of a particular belief may be established, in part, by reference to such rules. In the usual case, a showing that the suspect has an immediate possessory interest in the place of arrest, either as owner-occupant, tenant, subtenant, or hotel guest, may be all that is necessary to establish a "home" for Payton purposes. The legal right to exclude others

which such a possessory interest entails may carry with it, as a corollary, the right to be free also from governmental intrusion.

In the absence of such a possessory interest, a suspect may still be entitled to consider a particular place his "home." For example, the unemancipated children or dependents of the possessor may be entitled to consider the possessor's home their own. On the other hand, mere physical presence in a particular place may not suffice to establish a "home" for Payton purposes. A suspect who has his own home and stays temporarily as the guest, invitee, or visitor at the home of another may not claim his host's home as his own.

If, however, the suspect does not have a home to which he can return, the suspect may, under the proper circumstances, be entitled to claim the host's home as his own for

Payton purposes. Whether he can do so will depend upon the particular facts and circumstances of the case. Of crucial significance will be the intention of the parties. If both host and suspect contemplate that the suspect remain indefinitely, the host's home will be considered the suspect's home. An intent to remain indefinitely may be inferred either from subjective evidence of the desires of the parties or from objective evidence. Factors to be considered include, but are not limited to: (1) whether the suspect is physically present at the host's residence for a substantial length of time prior to his arrest; (2) whether the suspect maintains a regular or continuous presence in the host's residence and particularly whether he sleeps there regularly; (3) whether the host grants the suspect exclusive use of a particular

area of the host's residence; (4) whether the suspect stores his clothes or possession in the host's residence; (5) whether the suspect receives mail at the host's residence or has his name on the door; (6) whether the suspect contributes to the upkeep of the host's household, monetarily or otherwise; and (7) whether the suspect and the host are related by blood or marriage.

The assessment of all of these factors, and the ultimate determination of whether the suspect was arrested within his home, are matters to be determined in the first instance by the trial court, and the trial court's determination will not be overturned upon review unless manifestly erroneous. (See People v. Clark, (1982), 92 Ill. 2d 96, 99.) While the record in this case is somewhat sparse, we cannot conclude that the trial court's decision was manifestly

erroneous. The defendant was no longer living with his wife in the Federal Street apartment, and so far as the record shows, he had no possessory interest either in that apartment or in any other. Either his home was the Loving home or he had no home. The defendant's sister-in-law, the defendant's brother, and the defendant all testified that the defendant had continuously resided at the Loving apartment for seven to nine days prior to his arrest. Neither of the Lovings indicated that they had placed any time limit upon the length of the defendant's stay. Particularly given the blood relationship between the defendant and Michael Loving, the record supports the trial court's conclusion that the Loving home was the defendant's home.

The appellate court's contrary conclusion is apparently based on a

misreading of the record, as is the State's argument here. The appellate court believed that the "defendant's mother testified that on the evening before his arrest, defendant was staying with her and was aware at the time that the police were looking for him." In fact, the defendant's mother merely reported that she had told the defendant on the evening before his arrest that the police were looking for him. She did not state, and was not asked, where that conversation took place. While she was never asked directly where the defendant had been staying during the seven to nine days immediately prior to August 23, her testimony is fully consistent with the testimony of the other witnesses that the defendant was staying at the Loving apartment. She stated that she "was not sure how long" the defendant had been staying with the Lovings - testimony inconsistent with the

State's argument that the defendant had been staying with her on the evening of August 22. She stated that she had seen the defendant at the Lovings during visits there, and that the defendant had no other permanent address. Moreover, even assuming that her testimony conflicted with that of the Lovings and the defendant, the trial court was free to disregard her testimony, or any portion of it, in favor of the testimony of the other witnesses. People v. Clark (1982), 92 Ill. 2d 96, 99.

The State also contests the trial court's determination on other grounds, citing evidence that the defendant had previously been living with his wife, sister, and mother during the summer of 1982, and that the defendant neither kept his name on his brother's apartment nor received mail there. These facts, while certainly relevant

to the question of whether the Loving apartment constituted the defendant's home, are not determinative. Given the length of the defendant's stay, the defendant's lack of any other permanent address, and the blood tie between the defendant and Michael Loving, the trial court was entitled to conclude that the Loving home was the defendant's home.

The appellate court also apparently believed, and the State explicitly argues, that the defendant could not claim the Loving home as his own because he fled there to escape the police. We reject this argument for two reasons. First, we do not agree that a suspect who flees to his own residence to escape capture thereby forfeits his right to claim that place as his home for Payton purposes. If that were true, the Payton guarantee would have no meaning, because the State could always claim that a suspect who

commits a crime and then returns home has "fled" there from the police. While it is true that flight and the possibility of flight have some bearing on the question of exigent circumstances, exigency is a separate question from the question of whether the suspect was arrested in his home.

We also reject this argument because it apparently rests on the mistaken factual premise that the defendant was staying with his mother up until the evening of August 23, and only "fled" to his brother's apartment when his mother told him that the police were looking for him. We have stated above why this premise is mistaken; the evidence clearly permitted the trial court find that the defendant had been staying with the Lovings for seven days prior to August 23. In fact, since the defendant learned from his mother on August 22 that the police were

looking for him, his decision to remain in the Loving residence despite the knowledge conflicts with the premise that he was "fleeing" from the police.

The only case cited by the State in support of its argument on this point, United States v. Lang (4th Cir. 1975), 527 F.2d 1264, is clearly distinguishable. In Lang, the defendant challenged the seizure of $300 obtained from an apartment where he was staying after he had committed a bank robbery. The defendant had paid the occupant of the apartment $300 to allow him to remain in the apartment while he was hiding from the police, and the occupant was clearly aware of the defendant's purpose. The court's opinion, which is extremely brief, contains no other facts. The court held that since the defendant was not "legitimately on the premises," he lacked standing to challenge

the search of the apartment and the seizure of the physical evidence. (527 F.2d 1264, 1266.) Lang did not involve the question of the definition of a suspect's home for Payton purposes, but the very different, if perhaps analogous, question of whether a defendant has standing to challenge the seizure of evidence from the place where he is arrested. Thus it is inapposite. Moreover, there is no showing in the instant case that Michael Loving was aware that the police were looking for the defendant.

Our conclusion is strengthened by the fact that in People v. Yates (1983), 98 Ill. 2d 502, we applied Payton to the arrest of a defendant who left his home one day after the crime for the home of a relative and was arrested at the relative's home three days later. Apparently, assuming Payton was applicable, we held that exigent

circumstances justified this at-home arrest. 98 Ill. 2d 502, 512, 515-517

We therefore hold that, under the facts of this case, the trial court's finding that the defendant was arrested in his home was not manifestly erroneous. We now address the question of whether exigent circumstances were present to justify his warrantless arrest. We conclude that they were not.

In several prior cases this court has established general guidelines for the determination of exigent circumstances. The circumstances must "militate[] against delay and justif[y] the officers' decision to proceed without a warrant." (People v. Abney (1980), 81 Ill. 2d 159, 168-69.) In addition, the police officers must act in a "reasonable fashion." (81 Ill. 2d 159, 169.) The guiding principle is reasonableness, and each case must be decided on the basis of the

facts presented (81 Ill. 2d 159, 173-74) and known to the officers at the time they acted (People v. Yates (1983), 98 Ill. 2d 502, 515.) While no list of factors bearing on exigency can be considered exhaustive, we have in the past taken into account: (1) whether the offense under investigation has been recently committed (People v. Abney (1980), 81 Ill. 2d 159, 169); (2) whether there was any deliberate or unjustified delay by the officers during which time a warrant could have been obtained (81 Ill. 2d 159, 170-71); (3) whether a grave offense is involved, particularly a crime of violence (People v. Yates (1983), 98 Ill. 2d 502, 515); (4) whether the suspect is reasonably believed to be armed (98 Ill. 2d 505, 515; see also People v. Abney (1980), 81 Ill. 2d 159, 171); (5) whether the police officers were acting upon a clear showing of probable

cause (People v. Yates (1983), 98 Ill. 2d 502, 515; accord, People v. Abney (1980), 81 Ill. 2d 159, 171-72), (6) whether there is a likelihood that the suspect will escape if not swiftly apprehended (People v. Yates (1983), 98 Ill. 2d 502, 515); (7) whether there is strong reason to believe that the suspect is in the premises (98 Ill. 2d 502, 515); and (8) whether the police entry, though nonconsensual, is made peaceably (98 Ill. 2d 502, 515). All of these factors are guidelines, and not cardinal maxims to be applied rigidly in each case. (98 Ill. 2d 502, 515-16). In this case, their application compels the conclusion that exigent circumstances were not present in this case.

Nearly two weeks elapsed between the commission of the murders, on August 12, and the arrest of the defendant, on August 23.

The police learned immediately after the murders that the defendant was "involved." Detective Antanocci and Jaglowski were assigned to the case on August 19, four days before the defendant's arrest. At any time prior to August 23, the police might have, but did not, seek a warrant for the defendant's arrest. Moreover, three days of the delay were attributable not to a continuing investigation but were instead caused by the happenstance that Antanocci and Jaglowski went off duty. The State's claim that the danger of flight or further violence precluded them from seeking a warrant is belied by the fact that they dropped the investigation for these three days without assigning it to any other officers.

The passage of time between the commission of the offense and the arrest has a significant bearing on claims of exigency.

One study has shown that "nearly 50 percent of all arrests are made some time after the commission of the crime as the result of a 'hot' search of the crime scene or a 'warm' search of the general vicinity of the crime. *** [V]ery few additional arrests occur immediately thereafter. Rather, there is a delay while further investigation is conducted; about 45 percent of all arersts occur more than a day after the crime, and nearly 35 percent of all arrests are made after the passage of a week." (2 W. LaFave, Search and Seizure 572-73 (2d ed. 1986), citing President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Science and Technology 96 (1967). The lapse of time between the commission of the crime and the discovery of a suspect's whereabouts will make it much less likely that any additional "'[d]elay to

obtain a warrant would have impeded a promising police investigation and conceivably provided the added time needed *** to avoid capture altogether.'" (People v. Abney (1980), 81 Il. 2d 159, 170, quoting United States v. Robinson, (D.C. Cir. 1976) (en banc), 533 F.2d 578, 583, cert. denied, (1976), 424 U.S. 956, 47 L.Ed.2d 362, 96 S.ct. 1432.) In this case, the lapse of nearly two weeks between the commission of the crime and the discovery of the suspect's whereabouts rendered it extremely unlikely that an additional several hours of delay to obtain a warrant would have enabled the defendant to escape or permitted him to commit another serious crime.

Consideration of the second factor also militates against exigency. It is true, as the State argues, that the police did not engage in an unnecessary delay after speaking

with Desiree White and learning that the defendant was residing with his brother. However, "unnecessary delay" is to be measured not from the time when police officers learn the suspect's location but from the time they obtain probable cause to arrest. Under Payton, "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." (Payton v. New York (1980), 445 U.S. 573, 603, 63 L.Ed.2d 639, 661 100 S.Ct. 1371, 1388.) In other words, under Payton the police need not obtain a search warrant to enter the defendant's residence if they possess an arrest warrant for the defendant and probable cause to believe the defendant is within the premises. (United States v. Clifford (8th Cir. 1981), 664 F.2d 1090,

1093). Thus, the police entry in this case would have been justified by an arrest warrant secured any time after they received probable cause to arrest the defendant. While the record is not precise as to the date, the police seem to have received probable cause in the form of statements by eyewitnesses shortly after the killings on August 12. Detectives Antanocci and Jaglowski supposedly possessed probable cause at the outset of their investigation, on August 19. Moreover, after learning the address of Desiree White, and having reason to believe the defendant resided there, the two detectives dropped their investigation for three days instead of proceeding to obtain a warrant for the defendant's arrest. Thus, an unnecessary delay of at least three days, during which a warrant might have been obtained, preceded the defendant's warrantless arrest.

The considerations in favor of a finding of exigency are those related to the gravity of the crime, the possibility that the defendant was armed, and the further possibiity that he might attempt to escape. In the proper case, we might well find these considerations decisive. Here, however, the behavior of the officers involved makes it impossible to believe that their failure to seek a warrant was in any way related to their perception of the danger of the situation. Not only did the officers fail to pursue the defendant for three crucial days, they also took the defendant to the stationhouse without placing him in handcuffs, even though, according to Detective Jaglowski, the defendant had just attempted to elude arrest by fleeing through the rear porch.

In fact, in the appellate court, the State itself used the officer's failure to place the defendant in handcuffs to argue that the defendant had not been arrested, and had simply voluntarily accompanied the officers to the police station. Since the State does not reraise this argument in its brief here, there is no need to address the merits of this contention. However, this argument does illustrate the absurdity of any claim of exigency. It is simply not possible that the defendant was so dangerous that there was no time to seek a warrant for his arrest, but not so dangerous that there was no need to arrest him. Either of these two contentions might be plausible - but not both. The detectives may have, in fact, believed that the defendant was dangerous, but attempted to create the impression that he was not under arrest to as to later argue

that statements the defendant might make were not the product of custodial interrogation. It is also possible that they did not, in fact, have probable cause to arrest the defendant, or not a strong enough showing of probable cause to risk seeking a warrant from a neutral magistrate. Regardless of their actual motivation, their deliberate acts in contravention of a claim of exigency supported the trial court's finding that no exigent circumstances justified their failure to seek and obtain a warrant.

We therefore hold that, under the unique circumstances of this case, the defendant's warrantless arrest was not justified by exigent circumstances.

The State next argues that the defendant's arrest was not violative of his fourth amendment rights because Michael Loving gave the officers consent to enter the

apartment. It is true that voluntary consent to entry will justify a warrantless at-home arrest even in the absence of exigent circumstances. (People v. Bean (1981), 84 Ill. 2d 64, 69, cert. denied, (1981) 454 U.S. 821, 70 L.Ed.32d 93, 102 S.Ct. 106.) Moreover, such consent need not be given by the defendant; it may instead be obtained from a third party. (84 Ill. 2d 64, 69; see also United Sates v. Matlock (1974), 415 U.S. 164, 171, 39 L.Ed.2d 242, 249-50, 94 S.Ct. 988, 993; People v. Heflin (1978), 71 Ill. 2d 525, 541.) However, the State has the burden of proving that the consent given was truly voluntary, and the voluntariness of that consent is a question of fact to be determined from a consideration to the totality of circumstances in a particular case. (Schneckloth v. Bustamonte (1973), 412 U.S. 218, 248-49, 36 L.Ed.2d 854, 875, 93

S.Ct. 2041, 2059.) The totality of circumstances in this case supports the trial judge's finding that Michael Loving did not voluntarily consent to the police entry.

The State's argument on this point rests mainly upon the interpretation of the weight and credibility of the various witnesses to the officer's entry. The State argues, for example, that the trial court should have credited Detective Antanocci's testimony that the officer's were "permitted" into the apartment. The State also argues that Lov[illegible] "knew" the men at his front door w[illegible] policemen because, when asked, he denied that the defendant was there.

We do not agree. Detective Antanocci's statement that the officers were "permitted" into the apartment was a statement of a legal conclusion rather than of a fact, and the trial judge was entitled to disregard it.

The testimony of all of the witnesses established that Michael Loving opened the opaque door leading to the street only for his mother, not knowing that the officers were waiting to push past her and enter the hallway, Loving did not give the permission to go upstairs, and in fact pushed past them to enter the apartment first. The fact that he knew that they were police officers after they entered does not compel the conclusion that he condoned their continued presence. Moreover, the trial judge was certainly entitled to conclude that Loving's denial that the defendant was present did not constitute a grant of permission for the police to enter. We therefore hold that the trial court's finding that the police did not have consent to enter was not manifestly erroneous.

Finally, the State argues that the defendant's statements need not have been suppressed because they were not the tainted "fruit" of his illegal arrest. We do not agree.

In general, evidence garnered by illegal means must be suppressed if the evidence has been obtained by exploitation of the initial illegality and not "'by means sufficiently distinguishable to be purged of the primary taint.'" (Wong Sun v. United States (1963), 371 U.S. 471, 487-88, 9 L.Ed.2d 441, 455, 83 S.Ct. 407, 417.) In the case of a confession following an illegal arrest, the confession must be "sufficiently an act of free will to purge the primary taint of the unlawful invasion." (371 U.S. 471, 486, 9 L.Ed.2d 441, 454, 83 S.Ct. 407, 416-17.) Given the complexity of the workings of the human mind and the diverse possibilities of misconduct,

factors bearing on the determination of whether a confession was obtained by exploitation of an illegal arrest include: (1) the temporal proximity of the arrest and the confession, (2) the purpose and flagrancy of offical misconduct. (Brown v. Illinois (1975), 422 U.S. 590, 603-04, 45 L.Ed.2d 416, 427, 95 S.Ct. 2254, 2261-62; People v. Franklin (1987), 115 Ill. 2d 328, 333.) The burden of demonstrating attenuation between illegality and subsequent confession sufficient to render the confession admissible rests upon the prosecution. (Brown v. Illinois (1975), 422 U.S. 590, 604, 45 L.Ed.2d 416, 427, 95 S.Ct. 2254, 2262.) In this case, the trial judge did not manifestly err in finding that the prosecution failed to prove attenuation.

The State first argues that the voluntariness of the defendant's confession -

as indicated by his receipt of Miranda warnings and the trial judge's finding that he had not been physically coerced - dissipates the taint of his illegal arrest. While the State is correct that the presence of Miranda warnings is one factor to be considered in determining attenuation, Miranda warnings, alone and per se, can not dissipate the taint of an illegal arrest. (See Brown v. Illinois (1975), 422 U.S. 590, 603, 45 L.Ed.2d 416, 427, 95 S.Ct. 2254, 2261.) Indeed, satisfying the fifth amendment is only the threshold condition of the fourth amendment analysis required by Brown, for to admit automatically a voluntary confession obtained in violation of the fourth amendment would allow "law enforcement officers to violate the Fourth Amendment with impunity, safe in the knowledge that they could wash their hands in the "procedural

safeguards" of the Fifth.'" (Dunaway v. New York (1979), 442 U.S. 200, 219, 60 L.Ed.2d 824, 840, 99 S.Ct. 2248, 2260.) Moreover, in Dunaway the court specifically rejected the argument that the absence of physical abuse or coercion in that case served to distinguish it from Brown, precisely the argument the State resurrects here. Therefore, the presence of Miranda warnings and absence of physical coercion in this case merely establishes the threshold requirement for admissibility.

The State next argues that the 24 or more hours between the defendant's warrantless arrest and his subsequent statement render it unlikely that the defendant's warrantless arrest was the "catalyst" which caused the defendant to incriminate himself. We do not agree. The temporal proximity between an arrest and a

confession is often an ambiguous factor, the significance of which will depend upon the particular circumstances of a particular case. Indeed, "[i]f there are no relevant intervening circumstances, a prolonged detention may well be a more serious exploitation of an illegal arrest than a short one. Conversely, even an immediate confession may have been motivated by a prearrest event such as a visit with a minister." (Dunaway v. New York (1979), 442 U.S. 200, 220, 60 L.Ed.2d 824, 841, 99 S.Ct. 2248, 2260-61 (Stevens, J., concurring); see also People v. Franklin (1987), 115 Ill. 2d 328, 335-36.) Thus, where intervening circumstances are present, a long period between arrest and confession may support the inference that it was the intervening circumstance, and not the illegal arrest, which prompted the confession. However,

where no intervening circumstances are present, a long and illegal detention may in itself impel the defendant to confess.

The State argues that there were two intervening circumstances present in this case. First, the State posits as an intervening circumstances the presence of a codefendant, Tony Baskin, in an interrogation room next to the defendant. The State infers that Baskin may have said or done something which prompted the defendant to confess. The record does not reveal when the defendant was made aware of Baskin's presence. The defendant himself stated that Baskin called out to him at some point and suggested that the defendant obtain a public defender. The State, however, argues that Baskin's presence at the police station, and the defendant's awareness of his presence, constitute intervening circumstances sufficient to

dissipate the taint of the defendant's illegal arrest. We do not agree. While it is true that a defendant's confrontaton with untainted evidence, which induces in the defendant a voluntary desire to confess, may be a legitimate intervening circumstance (see People v. Gabbard (1979), 78 Ill. 2d 88, 99 (defendant confronted with sketch of robbery suspect prepared prior to his arrest and acknowledged the sketch resembled him); see also 4 W. LaFave, Search and Seizure 401(2d ed. 1986)), Baskin's present was hardly "evidence." Absent any suggestion that the defendant believed or knew that Baskin had implicated him in the crime, Baskin's presence was inherently ambiguous. Indeed, there is no evidence that Baskin said or did anything which would impel the defendant to confess. Given the State's burden of proving attenuation, Baskin's presence cannot,

without more, constitute an intervening circumstance which will dissipate the taint of the defendant's lengthy and illegal detention.

The two appellate court cases cited by the State for authority on this point are distinguishable. In In Re R.S. (1981), 93 Ill. App. 3d 941, 946-47, the defendant was confronted with a stolen clock seized pursuant to a valid search warrant unrelated to the defendant's illegal arrest. This was obviously untainted evidence capable of inducing a voluntary desire to confess. In People v. Faulisi (1977), 51 Ill. App. 3d 529, 534, the arrival of composite sketches of the defendant's apparently induced their confessions. In both cases the untainted evidence was obviously inculpatory and immediately prompted a confession. Here Baskin's presence was not obviously

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We do not agree. Acceptance of the State's position would enable the police to violate the fourth amendment with impunity, simply by dividing the police into two units - one composed of officers who would make illegal arrests but who would not interrogate, and the other composed of officers who would interrogate but not arrest. With the addition of a Chinese wall of silence between the two units, the police could ensure that a confession derived from an illegal arrest need never be suppressed.

We do not believe that People v. Gabbard (1979), 79 Ill. 2d at 88, compels such an absurd result. In Gabbard, it was held that a confession to a crime other than the one for which the defendant had been illegally arrested need not be suppressed as the fruit of an unlawful arrest. The arresting and interrogating officers belonged to different

police forces. Neither the arresting officer nor the governmental entity by which he was employed was investigating, or responsible for investigating, the crime to which the defendant confessed. This court held that suppression of the confession would not serve the deterrent purpose of the exclusionary rule. (78 Ill. 2d 88, 98.) Gabbard is consistent with our position here. Very few officers would illegally arrest a suspect on the off chance that the officer for another police force, investigating a different crime, might later interrogate the suspect and obtain a confession. It is much more likely, however, that an officer would illegally arrest a suspect in hope that an interrogating officer of the same force, investigating the same crime and conveniently left unaware of the illegality, might obtain the suspect's confession. Moreover, in

Gabbard, the connection between the arrest and the confession was also attenuated by the defendant's confrontation with a preexisting sketch of the man suspected of the robbery, an intervening circumstance not present here.

The State also argues that consideration of the purpose and flagrancy of police misconduct in this case would support its contention that the defendant's confession was not the product of his arrest. In support of this contention, the State first repeats its argument that the defendant was not mistreated while in custody. It also argues that the police conduct in apprehending the defendant was not "flagrant." It notes the fact that the officers did not batter down the doors of the Loving apartment, threaten it occupants, or misrepresent their reason for entering. The State also notes again the lack of handcuffs

and draws the conclusion that "the arrest of the defendant was accomplished with all due respect for defendant's wishes."

The State's account of the defendant's arrest leaves out the police entry into the Loving home by subterfuge, and the drawing of guns at the entrance of the Loving children's bedroom. The State's account also conflicts with the argument that the failure to seek a warrant was justified by exigent circumstances. Given the long lapse between the time when the police obtained probable cause and the arrest of the defendant, the failure to seek a warrant and grant the defendant the protection of a neutral magistrate is itself flagrant. Moreover, the leniency of the police conduct towards the defendant may have been motivated by considerations other than "due respect for the defendant's wishes" perhaps by the hope

of a later finding that the defendant had not really been arrested. Particularly given the lack of any intervening circumstance which caused the defendant to confess, consideration of the purpose and flagrancy of the police conduct in this case supports the trial court's conclusion that the defendant's confession should have been suppressed.

Lastly, the State argues that it is the place of the defendant's arrest which rendered that arrest illegal, and that the place of the defendant's arrest is not causally related to his confession. In other words, the State argues that the defendant would have confessed even if he had been arrested in a public place where no warrant was required. This argument lacks merit, for it would mean that Payton could only apply to physical evidence seized from a suspect's home, and never to confessions. Absent some

indication from the Supreme Court of the United States that this position is correct, we decline to adopt it.

For the foregoing reasons, we reverse the judgment of the appellate court, affirm the order of the circuit court of Cook County, and remand this cause for further proceedings consistent with this opinion.

Appellate court reversed;
circuit court affirmed;
cause remanded.

JUSTICE SIMON, concurring:

I join fully in the well-resonsed majority opinion. My concurrence is addressed to the precipitate action of the appellate court in deciding the appeal without benefit of a brief from the defendant, the prevailing party in the trial court. As the majority states, the defendant's failure to file an appellate brief apparently resulted from a clerical error in the public defender's office. (Slip op. at 1.) The trial judge held, as we do today, that the defendant's arrest should be quashed and his statements suppressed. In these circumstances, the decision of the appellate court to resolve the appeal involving a defendant charged with murder who had no appellate representation at all was pointless.

The appellate court believed that consideration of the merits of the State's

appeal was proper under the authority of First Capitol Mortgage Corp. v. Talandis Corp. (1976), 63 Ill. 2d 128. That case, however, involved the failure of a party to file a brief in a civil suit. The consequences of counsel's negligence in a criminal appeal are much harsher; while a negligent attorney in a civil case is liable for damages, "no attorney can restore his client's lost liberty." People v. Brown (1968), 39 Ill. 2d 307, 311.

In Brown this court observed that dismissal of a criminal defendant's appeal because of his lawyer's default in not filing a brief would be "repugnant to commonly held notions of justice and fair play." (39 Ill. 2d 307, 310; accord, People v. Mims (1980), 82 Ill. 2d 63; People v. Aliwoli (1975), 60 Ill. 2d 579.) Inscribed upon the Supreme Court building in Springfield is the

imperative "audi alteram partem" which means "hear the other side." A reviewing court that decides an important question in a murder case without briefing or argument for the defendant ignores that directive.

Here, had the appellate court inquired about the status of the brief instead of ignoring the defendant when no brief was forthcoming, the clerical error in the defender's office would not doubt have been discovered and the brief would have been filed. No intentional disregard of the appellate court appears to have been involved here. Had the appellate court exhibited more patience, assisted by a defendant's brief it might have affirmed the circuit court and made it unnecessary for us now to be affirming the circuit court and reversing the appellate court. In any event, the appellate court should have withdrawn its opinion and

set the case for briefing and argument when it was apprised of counsel's error.

APPENDIX B

Opinion of the Appellate Court of Illinois in People v. Walter White, (1st Dist., 5th Div., April 19, 1985)

APPENDIX B

FIFTH DIVISION
April 19, 1985

83-0847

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, vs. WALTER WHITE, Defendant-Appellee.	Appeal from the Circuit court of Cook County Honorable R. EUGENE PINCHAM, Judge Presiding.

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Defendant, Walter White, and codefendants, James Smith, Tony Baskin and Miles Barnes,[1] were charged by indictment with the offense of murder, armed violence and conspiracy. (Ill. Rev. Stat. 1981, ch. 38, pars. 9-1(a)(1), 9-1(a)(2), 33A-2 and 8-

[1]Codefendants Smith, Baskin and Barnes take no part in this appeal.

2.) Thereafter, defendant filed a motion to suppress statements made while in custody on the basis that such statements were obtained in violation of his fifth, sixth and fourteenth amendment rights. During the hearing on that motion defendant filed a second motion which requested that his arrest be quashed and the evidence seized pursuant thereto be suppressed on the basis that such evidence was obtained in violation of the fourth and fourteenth amendments. Although the trial court found that defendant's in-custody confessions were voluntarily given, it sustained defendant's motion to quash his arrest and suppress the evidence derived therefrom.

The State appeals, contending that the trial court erred in granting defendant's motion to quash his arrest and suppress evidence since exigent circumstances existed

for the police officers to enter the residence of defendant's brother; since the police apprehended defendant in that apartment in a peaceful manner during daylight hours immediately after learning that defendant could be found there; and since the police had reason to believe that defendant was an armed murderer of two individuals. The State further maintains that the trial court erred in suppressing the two voluntary, incriminating statements which defendant made more than 24 hours after his allegedly unlawful arrest since any taint due to the arrest was attenuated by evidence showing that those statements were given to authorities who had nothing to do with that arrest; and that the trial court erred in granting defendant's motion to quash his arrest since the evidence adduced at the hearing demonstrated that the police officers

entered the residence of defendant's brother with the latter's consent and since the overwhelming weight of the evidence showed that defendant voluntarily accompanied the police officers to the police station, and therefore, was not "seized" within the meaning of the fourth amendment. 87 Ill. R. 504(a)(1).[2]

On August 12, 1982, Charles Dickens was shot to death at 905 South Pulaski Avenue in Chicago. Approximately 10 to 15 minutes later, Donnell Copeland was bludgeoned and shot to death several blocks away. Through conversations with eyewitnesses to the murders, who were later indicted themselves for the offenses, Chicago police officers

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[2]Defendant has not filed a brief in this matter; nevertheless, we will consider the merits of the State's contentions. First Capitol Mortgage Corp. v. Talandis Construction Corp., (1976), 63 Ill. 2d 128, 133, 345 N.E.2d 493.

suspected that defendant was involved in the offenses.

On August 19, 1982, detectives James Antanocci and Allen Jaglowski of the Chicago police department were assigned to the investigation and began a search for defendant. Over the next several days the detectives canvassed several different addresses found in defendant's criminal history, CHA records, public aid records, State driver's license records and other sources. However, they were unsuccessful in locating defendant. On August 23, 1982, the two detectives were informed by defendant's mother that defendant could be found at the home of another of her sons, Michael Loving. That residence was located at 10951 South Michigan Avenue. Defendant's mother indicated that she was aware that defendant was wanted by the police, and she stated that

the night before she had informed defendant the police were looking for him. According to his mother, defendant stated to her that he did not commit the offenses and that he was going to surrender to police. Defendant's mother then agreed to accompany the detectives to Loving's apartment in an attempt to find defendant.

After the detectives and defendant's mother arrived at Loving's address, Jaglowski went around the back of the building. During this time Michael Loving went down the front stairway to answer the doorbell. According to Loving, he thought only his mother was at the door prior his opening it. However, upon opening the door he observed his mother standing with police officers. At first, Loving stated that he felt that "something wasn't right," and when the police indicated that they were looking

for defendant, Loving denied that defendant was present. Shortly thereafter, Loving admitted that defendant was in his second-floor apartment. The two detectives then walked past Loving and up the stairs towards that apartment. Loving further testified he did not invite the police officers inside. Defendant's mother stated that Loving did not tell the police they could not enter but rather that Loving "went on up and they went on up." When the officers entered the kitchen area of Loving's apartment, defendant was standing in the children's bedroom. When the detectives drew their guns and started toward the bedroom, defendant stepped into the kitchen. After this had taken place, Jaglowski entered through the rear door of the apartment.

Detective Jaglowski testified that when he, two other detectives and defendant's

mother arrived at Loving's address, he went to the back of the building where a rear exit from Loving's aprtment opened onto a back-porch area which connected the apartment to the ground via a "fairly well-broken down staircase." While Jaglowski was standing in the alley behind Loving's apartment, he observed defendant walk out the back door and across the porch. Defendant then made eye contact with Jaglowski, turned around and went back towards the rear door. Jaglowski yelled to his fellow officers that defendant was attempting to escape and also stated to defendant "Stop! Police!" At that point, defendant reentered Loving's apartment. Jaglowski then made his way up the staircase, drew his revolver and knocked on the back door. According to Jaglowski, one of defendant's relatives unlocked the door and let him enter. Jaglowski immediately

holstered his gun when he observed defendant speaking with the other officers and his mother.

The detectives testified that defendant and his mother agreed to accompany them to police headquarters. The mother told defendant to go along with the police officers and tell them the truth. According to the detectives, defendant was not handcuffed during this ride with his mother to the police station.

At the station, defendant was placed in an interview room and questioned by detectives Antanocci and McNamon. McNamon advised defendant of his constitutional rights and received assurances from defendant that he understood those rights. Defendant was then questioned regarding the homicides. According to the detectives, they neither threatened nor beat defendant in any way

during the time that they were interviewing him.

At approximately 5 p.m. on August 24, 1982, defendant was interviewed by detectives Gary Bulava and James Hanrahan. These two detectives gave defendant his Miranda rights and again defendant indicated that he understood them. During the one-hour interview, defendant gave responsive answers regarding the circumstances of the homicides. Both of these detectives also indicated that they had neither physically nor psychologically coerced defendant during the interview.

Later that evening, assistant State's Attorney Thomas Roach interviewed defendant in the presence of detectives Bulava and Hanrahan. Again, Roach informed defendant of his Miranda rights, and defendant once again indicated that he

understood those rights and wished to speak with Roach. Roach then questioned defendant for approximately 30 minutes regarding the homicides and received responsive answers to those questions. However, defendant refused to make any written statement regarding his oral admissions to Roach. Roach also testified that he did not coerce defendant during that interview in any way. Roach further testified that he saw no visible evidence that defendant had been physically injured.

At approximately 9 a.m. on August 25, 1982, defendant was formally arrested. Prior to 6 p.m. that same day, defendant attempted to kill himself in the interview room by slashing his writs with a jagged piece of metal. Detective Clarence Thedford intervened after one of the codefendant's, who was in an adjacent interview room,

alerted that detective to defendant's actions. Thedford was able to stop the bleeding, and defendant was then transported to the hospital.

Defendant testified that he told the truth when he talked to the aforesaid detectives. Defendant stated that he attempted to commit suicide because he was depressed and scared. According to defendant, neither the detectives nor the assistant State's Attorney ever informed him of his Miranda rights. Defendant stated that he repeatedly requested to see his mother and a public defender. However these requests were not honored by the police. Defendant stated that while he was in the interview room detective Hanrahan threatened him with a flashlight, detective Bulava hit him on the left side of his face opening a gash over his eye and Bulava then grabbed him by the neck,

bashed his head into the wall approximately three times and struck him on the face several times. While he was on the ground, detective Hanrahan kicked him in the ribs before he crawled underneath a desk. After this had taken place, the detectives attempted to coax defendant out from underneath the desk by offering to get him coffee and food. According to defendant, when he informed assistant State's Attorney Roach that the police had just beaten him, Roach shook his head and walked out of the room.

Regarding defendant's motion to quash his arrest and suppress the evidence derived therefrom, defense counsel argued that the police officers arrested him in Loving's apartment without a warrant, without consent to enter the apartment and without exigent circumstances justifying the actions that they took. The trial court sustained

defendant's motion, citing Payton v. New York, (1980), 445 U.S. 573, 574-79, 63 L.Ed.2d 639, 100 S.Ct. 1371. The trial court also found specifically that the police officers did not physically harm defendant and that the statements he made were voluntary admissions. However, the trial court suppressed both confessions on the grounds that they were obtained as a result of the illegal warrantless arrest, and neither statement was sufficiently attenuated from the arrest to justify their use at trial.

As indicated above, the State contends that the trial court erred in granting defendant's motion to quash his arrest and suppress his statements since the police apprehended defendant in Loving's apartment in a peaceful manner during daylight hours immediately after learning

that defendant could be found there; since the police had reason to believe that defendant was a violent, armed murderer who attempted to avoid arrest by staying at his brother's apartment and who tried to avoid the police again by exiting the apartment through a rear door when the police arrived at the front door; since the evidence adduced at the suppression hearing demonstrated that the police officers entered Loving's residence with his consent; and since the evidence demonstrated that defendant voluntarily accompanied the police to the police station, and therefore, he was not "seized" within the meaning of the fourth amendment. The State also maintains that the trial court erred in suppressing the two incriminating statements made by defendant more than 24 hours after his allegedly unlawful arrest since any taint due to the

arrest was attenuated by the evidence which showed that those statements were given to authorities who had nothing to do with the arrest, who carefully and repeatedly informed defendant of his Miranda rights, and who committed no acts of misconduct.

We agree that the trial court erred in granting defendant's motion to quash his arrest and suppress his statements in view of the fact that the police had substantial reason to believe that defendant was an armed murderer of two individuals who was attempting to avoid detection by the police by staying at the residence of several relatives. Because of this, we will not discuss the other aspects of the State's contentions.

It is well established that law enforcement officers are justified in making a warrantless and nonconsensual arrest of an

offender in a home when exigent circumstances present themselves. (People v. Abney, (1980), 81 Ill. 2d 159, 166-69, 407 N.E.2d 543.) The following factors have been considered useful in judging the exigency of a particular situation: (1) a grave offense is involved, particularly a crime of violence; (2) the suspect is reasonably believed to be armed; (3) there exists a clear showing of probable cause; (4) there is a strong reason to believe that the suspect is in the premises; (5) there is a likelihood the suspect will escape if not swiftly apprehended; and (6) the police entry, though nonconsensual, is made peaceably. (People v. Yates (1983), 98 Ill. 2d 502, 515, 456 N.E.2d 1369.) Each case must be decided on the basis of the facts of that case with the guiding principle being the reasonableness under the constitutional provisions governing

searches and seizures. People v. Eichelberger (1982), 91 Ill. 2d 359, 370, 438 N.E.2d 140.

Although the homicides happened on August 12, 1982, the detectives were assigned to the investigation one week later. Thereafter, they checked several known addresses where defendant previously had indicated that he had resided. The detectives were first given the information that defendant was at Michael Loving's residence on August 23, 1982. Immediately thereafter, they went to that location. It was further established that the victims were killed with various weapons, including a shotgun, handgun and a bottle. It was reasonable to presume from these facts that defendant was an armed and dangerous criminal who knew he was being sought by the police and was trying to avoid detection. The police confirmed this when

they spoke to defendant's mother who indicated to the officers that defendant had been staying with her and during that time had indicated to her that he knew the police were looking for him.

Moreover, when the police arrived at Loving's apartment they did not attempt to batter down the doors or even draw their guns when they first arrived. At that time, defendant's mother informed Loving that the police wished to speak with defendant. Loving initially lied to the police by stating that defendant was not there, but he then admitted that defendant was present. The detectives then walked up the stairs to the second floor apartment in a peaceful manner.

Regarding the guidelines, outlined in People v. Yates, we must conclude that such standards were amply satisifed by this

evidence. First, grave offenses were involved. Second, the officers knew defendant was in Loving's apartment before they entered it, and third, there was an adequate showing of probable cause in that defendant had been identified as a perpetrator of the offenses by one of the codefendants. Furthermore, the officers peacefully entered Loving's apartment during daylight hours after Loving had been informed by the police of their purpose for being there. And lastly, defendant's attempted exit through the rear door of the apartment indicated that he would escape if not swiftly apprehended.

In view of these facts, we believe that exigent circumstances existed. Therefore, we must conclude that the warrantless, nonconsensual arrest of defendant in Loving's residence was justified.

Moreover, even if exigent circumstances were not present, we are of the opinion that Payton v. New York would still not be relevant to the present situation as the State suggests in its brief. In Payton, Justice Stevens, writing for the majority, stated:

> "We *** hold that the Fourth Amendment *** prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." (445 U.S. 573, 576.)

The evidence in the present matter demonstrated that just prior to being arrested, defendant had lived intermittently with his sister, his mother and his brother, Michael Loving. It was also established that

during the summer of 1982 defendant also had lived with his wife at a fourth location. In addition, defendant's mother testified that on the evening before this arrest, defendant was staying with her and was aware at that time that the police were looking for him. Since he was arrested the next day at Loving's residence, we feel it was reasonable to presume that defendant went to his brother's apartment to avoid detection by the police.

The ambit of "a suspect's home," as alluded to by the Payton majority, has been narrowly defined in subsequent decisions. (United States v. Holland (2d Cir.), ___ F.2d ___ (No. 84-1088 filed February 8, 1985), and People v. Blount, (1981), 101 Ill. App. 3d 443, 446-47, 428 N.E.2d 621.) It has been held that an accused is not entitled to contest a warrantless entry of the residence

of a third party to effect his arrest, if the accused was on those premises for the purpose of avoiding detection or capture by the police. (United States v. Lang (4th cir. 1975), 527 F.2d 1264, 1266.) Thus, the trial court's reliance on Payton v. New York (1980), 445 U.S. 573, 63 L.Ed.2d 639, 100 S.Ct. 1371, was misplaced.

Since the trial court held that defendant's confessions were given voluntarily and were not coerced and since the trial court suppressed those confessions based solely on its determination that they were the products of defendant's improper warrantless arrest, we must reverse the order suppressing those statements. For the reasons stated above, the order of the trial court, quashing defendant's arrest and suppressing his confessions, will be reversed. The cause is remanded to the circuit court for further proceedings.

Dated at Chicago, Illinois, this 19 day of April, 1984.

MEJDA, PJ., LORENZ and SULLIVAN, JJ., concur.

No. 87-1011

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

PEOPLE OF THE STATE OF ILLINOIS, Petitioner, vs. WALTER WHITE, Respondent.	)	On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONSE PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

1. Certiorari should be denied because, contrary to the assertion of petitioner, the lower court quite clearly applied the correct rule of law in affirming the trial court's suppression of respondent's in-custody statements as the product of his illegal arrest. The petitioner's contention that respondent's statement "was in no sense the product of the allegedly illegal entry" and was "not the product of unlawful police conduct" (Petition for Certiorari, p.14) is directly contrary to this Court's decisions in Wong Sun v. United States, 371 U.S. 471 (1963) and Brown v. Illinois, 422 U.S. 590 (1975) The unlawful entry and illegal arrest of petitioner lead directly to his interrogation and statements. Although Petitioner contends that the confession was admissible under the "attenuation rule", petitioner cites no facts in support of its claim of attenuation, except to state repeatedly that the confession was made at "another time and place --" i.e., on the day following respondent's arrest and at the police station. To accept petitioner's claim would be to hold that the police can cause attenuation by holding petitioner illegally overnight and removing him to the police station. See Dunaway v. New York, 442 U.S. 200, 220 (1979) (concurring opinion of Mr. Justice Stevens)

2. Petitioner's reliance on the "inevitable discovery" rule and the "independent source" doctrine fares no better and is supported by nothing more than the bold assertion that it "is quite clear that respondent would have confessed had he been arrested on the street." (Petition for Certiorari, p.18) There are no facts cited in support of this claim and the record does not support it. Moreover, the "independent source doctrine", upon which respondent principally relies, has absolutely no application here. As this Court stated in Nix v. Williams, 467 U.S. 431 (1984), "The independent source doctrine allows admission of evidence that has been discovered by means "wholly independent of any constitutional violation." (467 U.S. at 443) (emphasis added) The statements of respondent cannot in any sense be said to have been obtained by a "means wholly independent" of the constitutional violation.

3. Petitioner's suggests that arrests which are illegal under Payton v. New York, 445 U.S. 573 (1980) be treated differently and that the suppression order be limited to evidence seized at the time of the illegal entry. There is no precedent for treating an illegal arrest under Payton differently than other illegal arrests, and it would not be wise to carve court exceptions to the rule of Wong Sun. The only reason offered in support of this contention is that the statements were "not the product" of the illegal entry. This rather simplistic approach not only begs the question but ignores the well-settled rules established by this Court in Wong Sun and Brown for determining whether the evidence sought to be suppressed was obtained by exploitation of the initial illegality and not by means sufficiently distinguishable to be purged of the primary taint. Wong Sun v. United States, 371 U.S. 471, 488 We commend to the Court the analysis of the Supreme Court of Illinois on this pont at pp.25-3256 of its opinion. (Petition for Certiorari, Appendix A, pp.25-32)

4. Finally, we point out that this Court has never held that the taking of a statement at a "different time and place" from that of the

arrest constitutes sufficient attenuation. As recently pointed out by Mr. Justice White in dissenting from a denial of certiorari in Phillip Lekas v. Illinois, (No. 87-5803, March 7, 1988), this Court has recognized that release from custody or presentation before a neutral magistrate may purge the taint of an illegal arrest, but has never held that confrontation of the accused with new evidence severs the link between the custodial confession and the illegal arrest. The facts of the respondent's case do not approach any of these circumstances and certainly provide an insufficient basis for consideration of the question which petitioner seeks to raise.

Respectfully submitted,

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